

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BRETT FULLER,)	
)	
Claimant,)	IC 03-002300
v.)	
)	
DAVID MUNDHENK,)	FINDING OF FACT,
)	CONCLUSIONS OF LAW
)	AND RECOMMENDATION
Employer,)	
Defendant.)	FILED OCT 14 2005
_____)	

INTRODUCTION

The Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Lewiston on September 9, 2005. Christopher Caldwell represented Claimant. Uninsured Employer was initially represented, but counsel withdrew with Commission approval well before the hearing. Employer neither appointed new counsel nor appeared at hearing. The case is ready for decision.

ISSUES

The issues to be resolved are:

1. Whether and to what extent Claimant is entitled to benefits for:
 - (a) temporary disability;
 - (b) permanent partial impairment (PPI);
 - (c) medical care; and
 - (d) attorney fees; and
2. Whether Employer is liable to Claimant for the penalties of Idaho Code § 72-210 for failing to insure liability.

Claimant reserved the issues of permanent disability and retraining.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 1

CONTENTIONS OF THE PARTIES

Claimant contends he suffered a broken back when he fell from a scissor lift while working for Employer. He nearly died and medical bills are approaching \$500,000. He has not worked since. Employer is uninsured and unreasonably refused to pay benefits.

Defendant, in his Answer, admitted only that the accident occurred and that notice was given. He denied all other aspects, including whether an employer-employee relationship existed. Defendant's Answer does not allege coverage existed or identify any surety.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant;
2. Claimant's exhibits 1 – 25 admitted at hearing.

After having fully considered all of the above evidence, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Claimant had worked as a sign maker and installer for Employer since October 2001. At the time of the accident he worked 40 to 60 hours per week and earned \$10.00 per hour. Under Idaho Workers' Compensation Law, Claimant's average weekly wage was \$500.00. Employer set Claimant's hours, supplied all equipment, and withheld taxes from Claimant's pay. At the time of the accident, Claimant was 38 years old.

2. On February 18, 2003, Claimant was with Employer 12 to 15 feet above the ground on a scissor lift installing a sign for a pawn shop. The sign fell and knocked Claimant off the lift.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2

3. Claimant was immediately taken to the hospital. He suffered a fractured L3 vertebra and required extensive surgery, including a fusion and installation of a metal cage around his lumbar spine. His recovery was complicated by a staph infection incurred in the hospital.

4. Eventually, the metal cage rubbed a hole in his aorta. Claimant almost bled to death. More surgery was required.

5. After these hospitalizations, Claimant underwent physical therapy for almost two years. A more detailed exposition of Claimant's course of medical care is unnecessary. Medical bills for reasonable treatment related to the injury have amounted to at least \$422,573.49 as of the date of the hearing.

6. Employer continued to pay Claimant a wage through September 15, 2003, but did not pay any medical benefits. Pay stubs show Employer paid Claimant \$11,920.00 during the first 30 weeks of Claimant's temporary disability.

7. On July 14, 2005, orthopedic surgeon Robert C. Colburn, M.D., evaluated Claimant. He opined Claimant suffered an injury which constituted a 44% whole man PPI as a result of the February 18, 2003 work accident.

DISCUSSION AND FURTHER FINDINGS

8. Claimant suffered a serious back injury as a result of the February 18, 2003 work accident. He was an employee within the parameters of the Idaho Workers' Compensation Law. He is entitled to temporary disability from February 18, 2003 to July 14, 2005. Applying Idaho Code §§ 72-408 and -409, Claimant is entitled to \$34,403.83. (This amount properly credits Employer for wages paid after the date of the accident.)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 3

9. There is no dispute that the necessary medical care received was reasonably required by the work accident. Multiple hospitalizations and surgeries, as well as extensive and painful physical therapy all arose from the fractured L3 vertebra. Claimant is entitled to medical benefits to the date of hearing in an amount not less than \$422,573.49.

10. Dr. Colburn's evaluation was thorough and persuasive. Claimant's PPI was appropriately rated at 44% of the whole person.

11. Employer's response – to pay Claimant a stipend for a little under seven months – was contrary to Idaho Workers' Compensation Law. Employer's refusal to pay medical bills was unreasonable. Employer's actions provide ample basis for an award of attorney fees under Idaho Code § 72-804.

12. Employer failed to obtain and carry current workers' compensation insurance. Employer is subject to the penalties, including costs and attorney fees, set forth in Idaho Code § 72-210.

CONCLUSIONS OF LAW

1. Claimant is entitled to TTD benefits in the amount of \$34,403.83;
2. Claimant is entitled to medical care benefits to the date of hearing in an amount not less than \$422,573.49;
3. Claimant is entitled to PPI rated at 44% of the whole person in the amount of \$63,591.00;
4. Claimant is entitled to an award of attorney fees under Idaho Code §§ 72-804 and/or 72-210;
5. Claimant is entitled to costs plus \$52,056.83 pursuant to Idaho Code § 72-210.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 4

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own and issue an appropriate final order.

DATED this 14TH day of OCTOBER, 2005.

INDUSTRIAL COMMISSION

/S/_____
Douglas A. Donohue, Referee

ATTEST:

/S/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 14TH day of OCTOBER, 2005, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

Christopher Caldwell
P.O. Box 607
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David Mundhenk
P.O. Box 3512
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db

/S/_____